

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

WILBERT VALLIER §
VS. § CIVIL ACTION NO. 1:06cv307
STEVE MORRIS, ET AL. §

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Wilbert Vallier, an inmate at the Federal Correctional Complex, proceeding *pro se*, brought this lawsuit against Steve Morris, Assistant Warden Aduche, LPN Howards, LPN Bean, MD Dominguez, and Administration Williams.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this action be dismissed for failing to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.


On October 4, 2006, plaintiff filed a motion requesting that this matter be postponed until he files his complaint through the administrative remedies process. However, the relevant statutory provision "plainly requires that administrative remedies be

exhausted before the filing of a § 1983 suit, rather than while the action is pending." *Wendell v. Asher*, 162 F.3d 887, 890 (5th Cir. 1998). Administrative remedies must be exhausted regardless of the type of relief which is sought in the lawsuit. *Booth v. Churner*, 532 U.S. 731, 740-41 (2001). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Accordingly, the action should be dismissed without prejudice to allow plaintiff to exhaust his administrative remedies.

O R D E R

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this the **31** day of **October, 2006**.


Thad Heartfield
United States District Judge